

ARIZONA JUDICIAL COUNCIL

Request for Council Action

**Date Action
Requested:**

March 22, 2018

**Type of Action
Requested:**

☒ Formal Action/Request

☐ Information Only

☐ Other

Subject:

Approval of Minutes

FROM:

Lorraine Smith, Staff to the Arizona Judicial Council

DISCUSSION:

The minutes from the December 14, 2017, meeting of the Arizona Judicial Council are attached for your review.

RECOMMENDED COUNCIL ACTION:

Approve the minutes as written.

ARIZONA JUDICIAL COUNCIL

State Courts Building
1501 W. Washington Street, Suite 119
Phoenix, AZ 85007

December 14, 2017

Meeting Minutes

Council Members Present:

Chief Justice Scott Bales
Judge Janet Barton
Ken Bennett
Judge Kyle Bryson
David Byers
Judge Peter Eckerstrom
Judge Charles Gurtler
Athia Hardt
Mike Hellon

Michael Jeanes
Gary Krcmarik
Judge Dorothy Little
Judge David Mackey
R. Tony Penn
Judge Samuel Thumma
Lisa Urias
Alex Vakula

Council Members Absent (excused):

Judge Rachel Torres Carrillo
Judge Louis F. Dominguez
Victor Flores
Lea Márquez Peterson

Judge Antonio Riojas, Jr.
Judge Monica Stauffer
George Weisz

Administrative Office of the Courts (AOC) Staff Present:

Theresa Barrett
Mike Baumstark
Catherine Clarich
Michele Gillich
Susan Hunt
Don Jacobson
Paul Julien
Jerry Landau
Amy Love
Michelle Martinez
Marretta Mathes
Mark Meltzer

Heather Murphy
Kate Novak
Pam Peet
Brittany Pelly
Kay Radwanski
Marcus Reinkensmeyer
Judge Ron Reinstein (ret.)
Lorraine Smith
Cindy Trimble
Kathy Waters
Mark Wilson
David Withey

Presenters and Guests Present:

Kevin Frye
Debbie Girado
Debra Grossman
Robert Grossman
David Irons
Hugh Jones
Martin Lynch
Judge Paul McMurdie
Judge Steven McMurry

Vice Chief Justice John Pelander
Marc Peoples
John Phelps
Steve Soldis
Alex Smith
Andrea Tazioli
Judge Randall Warner
Mike Williams
Jan Zahara

Chief Justice Scott Bales, Chair, called the meeting to order at 9:30 a.m.

Approval of Minutes

The Chair called for any corrections to the minutes from the Council's October 11, 2017, meeting.

MOTION: To approve the minutes from the October 11, 2017, meeting of the Arizona Judicial Council, as presented. The motion was seconded and passed. AJC 2017-47.

Small Claims Pilot Rules and Project

Judge Steven McMurry, Justice of the Peace, Encanto Justice Court, and Ms. Marretta Mathes, Court Services Specialist with the AOC, presented the draft rules for small claims actions and the framework for the proposed pilot project.

Judge Charles Gurtler asked that the language in Rule 19 be clarified to address his concern regarding sending a sheriff to execute on a small claims judgement. Mr. Mike Hellon noted that hearing officers are discouraged from giving legal advice or assistance to either side. Ms. Athia Hardt suggested the use of an ombudsman, similar to what is offered in California, might be a good addition.

Judge Sam Thumma noted that, for proceedings in which the Rules of Evidence do not apply, the Arizona Advisory Committee on the Rules of Evidence articulated this standard: "Any non-privileged evidence tending to make a fact at issue more or less probable is admissible unless the justice of the peace or the hearing officer determines the evidence lacks reliability or will cause unfair prejudice, cause confusion, or waste time" He suggested, as an amendment, that this language be included for the pilot.

Judge Dorothy Little expressed concern with Rule 18(a) and suggested that the language be changed from "must dismiss" to "may dismiss." The Chair suggested the language read "the court will dismiss the lawsuit absent good cause for continuing."

MOTION: To approve the implementation of a pilot, the adoption of the pilot rules by administrative order as amended, and the filing of a rule petition in January 2018. The motion was seconded and passed. AJC 2017-48.

Child Support Guidelines Interim Review

Judge Paul McMurdie, Chair of the Child Support Guidelines Interim Review Committee presented the Committee's final report and recommendations.

MOTION: To approve the proposed Child Support Guidelines to become effective April 1, 2018, as presented. The motion was seconded and passed. AJC 2017-49 (Judge David Mackey and Alex Vakula opposed; Judge Samuel Thumma abstained).

Fair Justice Issues

Mr. Marcus Reinkensmeyer, Director of the Court Services Division of the AOC presented the Fines/Fees and Restitution Enforcement (FARE) Program modifications to support the Fair Justice initiatives. He noted that the proposed enhancements would provide enforcement alternatives for those who fail to appear or fail to pay court-ordered financial obligations, including establishing payment plans online, email and text message reminders, correctable violations online, online Compliance Assistance Program (CAP), recurring payments, and offsite cash payment locations.

MOTION: To approve the concept of FARE program modifications, as presented. The motion was seconded and passed. AJC 2017-50.

Mr. Dave Byers and Mr. Don Jacobson, Senior Special Projects Consultant for the AOC spoke on the draft administrative order template and policies for Rule 11 legislation to implement mental health competency proceedings in criminal matters in limited jurisdiction courts.

MOTION: To approve the administrative order template and policies for implementation of Rule 11 legislation, as presented. The motion was seconded and passed. AJC 2017-51.

Strategic Agenda Update

Mr. Mike Baumstark, Deputy Director of the AOC presented an update on the Strategic Agenda "Advancing Justice Together" accomplishments.

Defensive Driving

Mr. Mark Wilson, Director of the Certification and Licensing Division for the AOC provided background information on the defensive driving issues to date and the proposed amendments to ACJA § 7-205: Defensive Driving.

Ms. Michele Gillich, Project Manager with the Information Technology Division for the AOC, along with representatives (telephonically) from the Moore Creative Company shared a demo of the new defensive driving school website. Ms. Gillich noted that the Moore Creative Company has performed development work on the website to update functionality to allow users to search for online and in-person classes.

Public comment was received from the following individuals:

- Mike Williams – Arizona Traffic School Coalition. Mr. Williams thanked Mr. Wilson and staff for their hard work. He noted that bonding requirements are important and recommended that AOC staff have the right to work and develop rules and standards as we move forward. Mr. Williams stated that liability insurance does not cover cyber insurance, and he encouraged the Council to look at both liability and cyber insurance to protect the public and customers, as well as Arizona's taxpayers.
- David Irons - National Traffic Safety Institute. Mr. Irons stated that it is wise to protect the money that schools collect to prevent future problems.
- Alex Smith - National Traffic Safety Institute. Mr. Smith asked that the surety bond minimum be increased and that a cap be issued as part of that surety bond. He expressed concern with stacking of pins on the website during searches and the cost of a bond for a new company versus an established company.
- Steve Soldis – Distance Learning Company. Mr. Soldis commended the AOC and the Court for their efforts. He noted that a surety bond is important, and he encouraged a higher minimum bond. Mr. Soldis added that security requirements are vital and critical, and each school should have their own separate and off-site server.
- Kevin Frye – Super Fly Defensive Driving Online. Mr. Frye expressed concern about removing the requirement for participation questions. He asked that the Council move forward with website changes only.

A motion was made to approve the proposed code section amendments as presented. Discussion took place about the surety bond amount. A motion was made and seconded to amend the motion to increase the surety bond to \$50,000. After additional discussion, the motion to amend was withdrawn.

MOTION: To approve the ACJA § 7-205: Defensive Driving amendments, as presented. The motion was seconded and passed. AJC 2017-52.

Capital Case Oversight Committee Progress Report

Judge Ron Reinstein (ret.), Chair of the Capital Case Oversight Committee presented the 2017 progress report.

Commercial Court Pilot Program 2017 Report

Judge Randall Warner, Civil Presiding Judge in the Superior Court in Maricopa County presented the Commercial Court Pilot Program's progress report.

Judge Barton noted that she supports the program, but she needs to find a better way to make it fit with the needs of the Superior Court in Maricopa County.

ACJC Order of Protection Improvement Project

Mr. Marc Peoples, Systems Improvement Administrator for the Arizona Criminal Justice Commission (ACJC) presented draft legislation, proposed by ACJC, to improve the process for obtaining, serving, and holding hearings on orders of protection. He noted that the proposal calls for changes in protocol for service and allows for automated processes among justice partners.

Discussion took place regarding quashing the warrant and the need to consider the ramifications if we change the system. Mr. Byers suggested that our judges meet with judges from Iowa and Indiana, where they have successful programs, to work through the issues.

MOTION: To approve the general concept of legislation to implement the outlined approach with the details to be worked out. The motion was seconded and passed. AJC 2017-53.

Legislative Issues

Mr. Jerry Landau, Director, and Ms. Amy Love, Deputy Director of Governmental Relations for the AOC provided an update on the status of the Council's legislative package noting that the following proposals were moving forward:

- 2018-01: Driving violations; restricted licenses; penalties
- 2018-02: Sentencing; monetary obligations; fine mitigation
- 2018-03: Misdemeanor sentence; authorize disposition
- 2018-05: Intensive probation; employment wages; monitoring
- 2018-08: Juvenile court facilities; shelters; use

Mr. Landau and Ms. Love presented on the following external legislative proposals:

2018-A: Order of protection; procedure (ACJC)

2018-C: Probate code (State Bar)

MOTION: To support 2018-C: Probate code, as presented. The motion was seconded and passed. AJC 2017-54.

2018-D: Life imprisonment; parole (Pima County Attorney's Office)

Discussion: Judge Ron Reinstein (ret.) presented the proposal as an informational item. The Chair noted this issue would be best addressed with a legislative fix.

2018-09: Judgment of conviction; set aside

Discussion: It was noted that even if the conviction is set aside, information will still exist regarding the fact of conviction. Concerns were noted about draft language "not required to disclose the conviction" and the process of applying for a job. Judge Barton made a motion to move forward with set-aside provision, but not the provision regarding disclosure in job applications, and have staff revisit implementation at a later date.

MOTION: To approve 2018-09: Judgment of conviction; set aside and move forward with the set-aside process only and revisit how it would be implemented at a later date. The motion was seconded and passed. AJC 2017-55.

Call to the Public

Mr. Martin Lynch provided public comment on child support and orders of protection.

Call to the Public/Adjourn

The meeting adjourned at 3:20 p.m.